

**MIR BASHARATH AHAMED**

**AND**

**PUBLIC PROSECUTOR**

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**Court of Appeal of Brunei Darussalam  
(Criminal Appeal No. 5 of 2022)**

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Before: Burrell P, Seagroatt and Lunn JJ A.

**Date of hearing: 15<sup>th</sup> November 2022**

**Date of Judgment: 28<sup>th</sup> November 2022**

Mr. Ahmad Basuni bin Haji Abbas and Ms Lim Wei Jia (Messrs. Abrahams, Davidson & Co) for the Appellant

DPP Hajah Rozaimah binti Haji Abdul Rahman for Respondent

**Seagroatt, JA.:**

This appellant was convicted on the 16<sup>th</sup> April 2022 by Judge Faisal following a trial with his co-accused brother which took place over a period of 21 months, on 6 counts of cheating under section 420 of the Penal Code. He was convicted on all counts.

In all six offences he dishonestly represented himself as an agent of H.R.H. Prince Sufri Bolkiah and induced the owner and manager of the Restoran Ismahana, and on one occasion the son of the owner/manager, to handover to him payments for the tenancy of the premises which belonged to His Royal Highness. The sums totaled BND\$19,500.

He appeals against these convictions and also against the sentences imposed which totalled 4 years and 8 months imprisonment together with a compensation order for the sum which he, in effect, stole from His Royal Highness.

The trial concluded on 16<sup>th</sup> April 2022 and the sentencing took place on the 11<sup>th</sup> May 2022. The owner/manager of the Restaurant gave clear evidence, of her frequent visits from the appellant whose conduct and regular reference to being asked by lawyers to collect the money, which she knew was for the benefit of a member of the Royal family, and being given receipts in the name of His Royal Highness, demonstrated the misrepresentation.

The appellant's own evidence in cross-examination confirms her evidence about lawyers from Istana demanding payment of the rent. His instructions, he said, came

from his brother. He agreed that he did not tell her this, or give any explanation to suggest that he was merely acting on behalf of his brother in collecting the amounts due. The only reasonable inference to be drawn from the contact with her as owner/manager of the restaurant is that she continued to make payment to the appellant because she believed from his conduct and what he said, that he had the authority of Prince Sufri Bolkihah to collect the rental payments.

Stripped of any unnecessary concentration on minor and therefore inconsequential details or conflicts of evidence, the essence of the appellant's case is that the trial judge overlooked the significance of some gaps in the evidence and wrongly concluded that the witnesses called established to the requisite standard of proof, the elements of the offences.

One of the arguments advanced was that, in the fourth count where the son of Madam Datin Masnah handed over to the appellant the cash cheque for \$BN10,500, there was no evidence that the appellant was misrepresenting by conduct and/or words that he was the agent of the landlord, HRH Prince Sufri Bolkihah. This is to ignore the fact that Madam Masnah had a series of meetings with the appellant, who by his conduct, words, demeanour and presentation of receipts implied that he was authorised by the landlord to collect rental monies, and she must have told her son that he was to meet the appellant outside a bank and hand him a cheque. The son was aware of the appellant's purported authority from earlier occasions when his mother had handed to the same man, sums of money, some in the form of cheques. On this occasion the appellant was required to sign a photocopy of the cheque as evidence of receipt, a very wise precaution.

The judge had clearly assessed the evidence both for the prosecution and the defence. He made it clear that it was difficult for him to believe the appellant on any of the fundamental issues. He was satisfied that he had represented to Madam Masnah that he was a representative or agent of His Royal Highness by his words and actions, "express or implied", and by the receipts and signing of copies of cheques; and in particular by lying to her about the existence of and pressure from the Palace's lawyers for the rental arrears to be paid. The lawyers did not exist. It was a fabrication.

He was unable to produce any credible explanation or record to show what he had done with the monies. At times he could not pay the rent due on the property he claimed to occupy. He did not produce any documentation to support his claim for a tenancy or his receipts for any payments made.

Apparently, though we have not seen the letter concerned, he and his brother wrote a letter of apology to His Royal Highness – and there is no dispute – that they promised to pay back the money owed i.e. the money wrongfully obtained from Madam Masnah, and never accounted for.

In short, the appellant was not credible in any material respect on any aspect. The judge had the advantage of seeing and evaluating the witnesses. He found the case proved. The sums of money had been fraudulently obtained from the restaurant family owners. They had been cheated. He has not accounted for any of the monies.

The arguments advanced by the appellant are scarcely credible. The judge accepted the evidence of the owner/manager of Restaurant Ismahana that the appellant had acted and spoken in such a way as to give her the clear impression that he was the representative of His Royal Highness Prince Sufri Bolkihah. The documentation and absence of it on occasions clearly indicated that although he had received the rental moneys, in whatever form, they had not reached the bank account of His Royal Highness. They were clear cases of deception and fraudulent activity.

The appeal against conviction is dismissed.

### Sentencing

He is a man of hitherto good character and has been involved in high profile sporting events and assisted the Royal Brunei Police Force as well as having served as an interpreter in the courts of Brunei. It was contended on his behalf that he committed these acts at a time or times of momentary blindness. The nature and extent of his actions do not fit such a description.

The offences were planned. The family of the restaurant owner has been defrauded of BND\$19,500, a substantial sum for the owner of a business which itself had economic problems. Representing himself as an authorized agent of His Royal Highness Prince Sufri Bolkihah, who was himself being defrauded by this appellant, was a singularly aggravating feature.

There has been delay, the sentencing date being 4 ½ years after he was first arrested.

The judge took a starting point of 2 years and 6 months there being no discount since he elected trial. He imposed this term on each of the 6 offences, ordering that the terms on the first 5 offences to be concurrent but that on the 6<sup>th</sup> was to be consecutive to the concurrent terms of 2 years and 6 months making a total of 5 years. However he rightly took the view that some allowance should be made for the delay, and so reduced the total by 4 months, leaving an overall sentence of 4 years 8 months for this series of serious offences.

He made a compensation order of BND\$19,500 in favour of the restaurant owner to be paid within 3 months, and if in default, he was to serve an additional six months imprisonment.

The one matter of concern is that there was no inquiry into the appellant's means when the compensation order was made. Imposing an additional prison sentence of six months was in our view wrong in principle. The order for compensation will stand in the unlikely event that Madam Masnah will be able to enforce it if and when the appellant has means. Since he has a period of imprisonment in respect of the amount stolen, it would also be wrong in principle to order an extra term in default of his payment of the same sum. Accordingly the sentence is varied to quash the six month term in default of payment, leaving a sentence of 4 years 8 months.

The prosecutor's assistance in confirming that there had been no means test is appreciated.

**Burrell, P.**

**Seagroatt, J.A.**

**Lunn, J.A**